TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

No. 79.

THE CAIRO AND FULTON RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

SAMUEL HECHT AND GEORGE H. STEPHENS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

FILED JUNE 22, 1875.

SUPREME COURT OF THE UNITED STATES.

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a By the honorable E. H. English, chief-justice of the supreme court of the State of Arkansas.

TO SAMUEL HECHT and GEORGE H. STEPHENS:

Whereas there has lately issued out of the Supreme Court of the United States a writ of error, directed to the chief-justice of the supreme court of *of* Arkansas, stating that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court, before the judge thereof, between The Cairo & Fulton Railroad Company and yourselves, as partners under the firm-name of Hecht & Stephens, a manifest error hath happened, to the great damage of the said Cairo and Fulton Railroad Company;

And whereas for the correction of that error in due manner the said writ has been issued, returnable at the next stated Supreme Court of the United States, at the city of Washington, on the second Monday of October next: you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the said 2nd Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Little Rock, Arkansas, the 14th day of January, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the 98th.

E. H. ENGLISH, *Ch. J.*

b We acknowledge service of the within citation this Jan. 22nd, 1875.

WITHERSPOON & MOORE,
Attorneys for Defendants in Error.

(Indorsed:) Cairo & Fulton R. R. Co. v. Hecht & Stephens. Citation.

c UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Samuel Hecht & George W. Stephens & The Cairo & Fulton Railroad Company, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United
d States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Cairo & Fulton Railroad Company, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice

done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, 1875, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being in-
e spected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the 5th of January, in the year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] RALPH L. GOODRICH,
Clerk U. S. Circuit Court, East. Dist. Arks.

STATE OF ARKANSAS,
In the Supreme Court:

In obedience to the mandate of the foregoing writ of error, and the allowance thereof by the chief-justice of the supreme court of the State of Arkansas, I have made out a complete transcript of the record as commanded, except as in the certificate thereto, which is hereto attached.

In testimony whereof I, Luke E. Barber, clerk of said supreme court, hereto set my hand and affix the seal of said court, at my office, in the city of Little Rock, Arkansas, this 1st day of June, A. D. 1875.

[SEAL.] L. E. BARBER,
Clerk.

f STATE OF ARKANSAS, *ss:*

This writ of error is this day presented to me, E. H. English, chief-justice of the supreme court of Arkansas, and is by me allowed January *January* 14th, 1875.

E. H. ENGLISH.

(Indorsed:) Cairo & Fulton Railroad Company v. Hecht & Stephens. Writ of error.

1 STATE OF ARKANSAS,
In the Supreme Court:

Be it remembered that at a term of the supreme court of the State of Arkansas, begun and held at the court-house, in the city of Little Rock, in said State, on fourth Monday, being the 23d day of November, A. D. 1874, were the following proceedings in the case of The Cairo and Fulton Railroad Company, plaintiff, vs. Hecht & Stephens, defendants. Error to Clayton circuit court.

Be it remembered that heretofore, to wit, on the 30th day of September, A. D. 1873, said plaintiff sued out of the office of the clerk of said supreme court a writ of error in the following words:

Writ of error.

In the supreme court.

The State of Arkansas to the clerk of the circuit court of Clayton County, greeting:

Because in the record and proceedings, and also in the giving of judg-

ment, in a suit which was in said circuit court, before the honorable W'm F. Henderson, judge thereof, between Hecht & Stephens, plaintiffs, and The Cairo & Fulton Railroad Company, defendants, of a plea of damages, manifest error has intervened, to the damage of said defendant, as it alleges, you are therefore hereby commanded, that, if final judgment be therein given, you send to the supreme court, under
2 your official seal, the record and proceedings aforesaid, together with this writ, on the first day of the next term of said supreme court of said State, which will be held on the 1st Monday of December, A. D. 1873, at the court-house in the city of Little Rock, in said State, that the record and proceedings aforesaid being inspected by said supreme court, it may cause to be done therein what according to law ought to be done, and that you return this writ under your official seal.

In testimony whereof I hereunto set my hand and affix the seal of said supreme court, at my office, in the city of Little Rock, this 30th day of September, A. D. 1873.

[SEAL.] N. W. COX, *Clerk.*

And afterwards on the 3d day of October, 1873, the said writ of error was filed, with the following return thereon:

Return in writ of error.

I, T. L. Martin, circuit clerk, in and for the county of Clayton, State of Arkansas, do hereby certify that I have obeyed the within command by this day forwarding to the clerk of the supreme court a complete transcript of the records and proceedings in the within-entitled cause.

Witness my hand and official seal. Done at Corning, Clayton County, Arkansas, this 2d day of October, 1873.

[SEAL.] T. L. MARTIN, *Clerk.*

And attached to said writ of error is the following transcript of the record and proceedings in said circuit court:

TRANS. OF C'T C'T.

Clayton circuit court.

HECHT & STEPHENS, PLAINTIFFS, *against* CAIRO & FULTON RAILROAD COMPANY, DEFENDANTS. } Complaint at law.

3 *Complaint.*

The plaintiffs, Samuel Hecht and George W. Stephens, partners under the name, firm, and style of Hecht and Stephens, state that the said defendant, Cairo and Fulton Railroad Company, before and at the time of committing the grievances next hereinafter mentioned, were the owners and proprietors of certain locomotives, moved and propelled by steam, by them used and employed carrying and conveying cars with passengers and goods, wares, and merchandise, over the line and track of said railroad from Moark, in the State of Arkansas, to Little Rock, in the aforesaid State, and to divers other places on and adjacent to the line and track of said railroad; and being such owners and proprietors of said locomotives, the said defendants, on the day of June, A. D.

1873, at or near Corning, in said county of Clayton, while proceeding with said locomotives on said track or line of said railroad, well knowing the premises, to wit, on the day and year last aforesaid, at the county of Clayton aforesaid, so negligently, carelessly, and unskillfully did, by himself and his engineers and conductors of said locomotives and trains of said defendants, that by and through the mere negligence, mismanagement, and carelessness of the said defendants, their engineers and conductors, the said locomotives of the said defendants did forcibly and with great violence then and there run foul against one ox belonging to said plaintiffs, and did then and there lacerate, wound, and cripple
4 said ox so as to render him worthless and of no use to said plaintiffs, (which said ox was of the value of fifty dollars,) to the damage of said plaintiff one hundred dollars.

2d. The plaintiffs further state that the said defendants, on the 22d day of July, A. D. 1873, at or near Corning, in said county of Clayton, while proceeding with said locomotives on said track and line of said railroad, well knowing the premises, to wit, on the day and year last aforesaid, at the county of Clayton aforesaid, so negligently, carelessly, and unskillfully did by himself, his engineers and conductors of said locomotive and train of the said defendants, that by and through mere negligence, mismanagement, and carelessness of the said defendants, their engineers and conductors, the said locomotive of the said defendants did forcibly and with great violence then and there run foul against two oxen of the said plaintiffs, and did then and there lacerate, wound, and kill one of said oxen, and so cripple and wound the other of said oxen as to render him worthless and of no service to said plaintiffs, (which said oxen were of the value of one hundred dollars,) and to the damage of said plaintiffs two hundred dollars.

3d. The plaintiffs still further state that the said defendants, on the 5th day of September, A. D. 1873, at or near Corning, in said county of Clayton, while proceeding on said track and line of said railroad,
5 well knowing the premises, to wit, on the day and year last aforesaid, at the county of Clayton aforesaid, so negligently, carelessly, and unskillfully did by themselves, and their engineers and conductors of said locomotives of the said defendants, did forcibly and with great violence then and there run foul against one ox of the said plaintiffs, and then and there did lacerate, wound, and kill said ox (which said ox was of the value of fifty dollars) of said plaintiffs, to the damage of said plaintiffs one hundred dollars.

Therefore he prays judgment for four hundred dollars, and for all other relief.

(Signed) RATCLIFFE & CRENSHAW,
Att'ys for Plaintiffs.

George W. Stephens, one of the plaintiffs, says he believes the above and foregoing complaint is true.

(Signed) GEORGE W. STEPHENS.

Sworn to and subscribed before me this 10th day of September, 1873.

(Signed) T. L. MARTIN, *Clerk.*

Filed this 10th day of September, 1873.

(Signed) T. L. MARTIN, *Clerk.*

Summons.

The State of Arkansas to the sheriff of Clayton County, greeting:

You are hereby commanded to summon The Cairo & Fulton Railroad

Company to answer, on the 3d day of the next September term of the Clayton County circuit court, a complaint filed against them in said court by Hecht and Stephens, and warn them that upon their failure to answer the complaint will be taken for confessed; and that you
6 will make due return of the summons on the 1st day of the next September term of said court.

In testimony whereof I have hereunto set my hand and affix the seal of said court on this 10th day of September, 1873.

(Signed) T. L. MARTIN, *Clerk.*

Original return.

I hereby certify that I served the within summons on the 10th day of September, 1873, by leaving a copy of the same with the clerk of the C. & F. R. R., (J. H. Carpenter,) at Corning, Ark.

(Signed) W. G. AKERS, *Sheriff.*

Amended return.

I hereby certify that I served the within summons, on the 10th day of September, 1873, by leaving a copy of the same with James H. Carpenter, a clerk in the employ of the C. & F. R. R., at Corning, Clayton County, Ark., there being no chief officer of said company found in this county.

(Signed) W. G. AKERS, *Sheriff.*

Subpœna.

The State of Arkansas to the sheriff of Clayton County, greeting:

You are commanded to summon John T. French, John McGuire, David Allen, and Kime Bledsoe to appear before the Clayton County circuit court on the 1st day of its next September term, which will be on Monday, the 22d day of September, 1873, and testify on behalf of the defendant in an action in said court between Hecht & Stephens, plaintiff, and The Cairo & Fulton Railroad Company, defendant.

Witness my hand as such clerk, and the seal of said court
7 hereto affixed this 19th day of September, A. D. 1873.

(Signed) T. L. MARTIN, *Clerk.*

Return in sub.

I hereby certify that I served the within subpœna by reading the same to the several witnesses therein named in their presence and hearing this 22d day of September, 1873.

(Signed) W. G. AKERS, *Sheriff.*

Mo. to set aside default.

Clayton County circuit court. Case No. 7. Complaint at law.

HECHT & STEPHENS
vs.
CAIRO & FULTON RAILROAD.

Now comes the defendant in the above-entitled cause, by its attorney, and moves the court to set aside the judgement rendered for default, and

for reason states: First. That the said defendant had no notice of the pendency of said suit, no summons or other legal process having been served on said defendant, as the law authorizes and directs.

(Signed) WILLIAM H. WINFIELD,
Att'y for Defendant.

Filed Sep. 25th, 1873.
(Signed) T. L. MARTIN, *Clerk.*

HECHT & STEPHENS
vs.
CAIRO & FULTON RAILROAD COMPANY. } 1st day Sep. T., 1873.

Now on this day comes the plaintiff', by P. H. Crenshaw, attorney, and asks and obtains leave to amend complaint herein; which is accordingly done.

SAMUEL HECHT AND GEORGE STEPHENS, partners under the name & style of Hecht & Stephens,
8 *vs.*
CAIRO & FULTON RAILROAD COMPANY. } Sep. T., 1873, 2d day.

And now on this day comes the plaintiffs, Samuel Hecht and George Stephens, partners under the name and style of Hecht and Stephens, by their attorney, and the defendant, The Cairo & Fulton Railroad Company, although having been duly summoned according to law, failed to appear and answer or demur to plaintiffs' complaint, but made default.

Judg't by default.

It is therefore ordered and considered by the court that plaintiffs have judgment against the defendant by default, and upon motion of plaintiffs' attorney it is ordered by the court that plaintiff have writ of inquiry to assess his damages sustained herein, made returnable instanter.

Assessment of damages.

And thereupon comes the sheriff of Clayton County and returned said writ of inquiry, duly executed according to law, returning therewith twelve good and lawful men as jurors, summoned by said sheriff to assess the damages aforesaid; and said twelve men, after having been duly empanelled and sworn according to law a true enquiry to make and assess the damages of said plaintiffs in this action sustained and true verdict thereof to render according to law and the evidence, after having heard the evidence produced in this cause and received the instructions of the law arising herein, retired to consider of their verdict,
9 and, after having been absent a short time, returned into court the following verdict:

Verdict.

"We, the jury, assess ($350.00) three hundred and fifty dollars damages in favor of the plaintiffs.

(Signed) "J. C. WISENER,
"*Foreman of the Jury.*"

Judgment.

It is therefore ordered and considered by the court that said plaintiffs have and recover of and from said defendant three hundred and fifty dollars for his damages herein sustained, together with all his costs in and about this suit paid, laid out, and expended, for which execution may issue.

HECHT & STEPHENS
vs.
CAIRO & FULTON RAILROAD COMPANY. } 4th day of Sep. T.

Filing mo. to aside default.

On this day comes the defendant, by attorney, W. H. Winfield, esq., and, by leave of the court, files his motion to set aside the judgment rendered herein.

Leave to amend return in summons.

Whereupon comes the plaintiffs, by attorney, and on their motion leave was granted to the sheriff to amend his return on the summons according to the facts; which is accordingly done.

Refusal to set aside default.

And the motion of defendant coming on to be heard, and the court, after hearing the arguments of the counsel, is of the opinion that said motion should be overruled: It is therefore by the court considered that said motion should be overruled; to which ruling of the court in overruling his motion to set aside judgment the defendant at the time excepted, and asked that said exception be noted of record; which is done.

STATE OF ARKANSAS,
County of Clayton:

I, T. L. Martin, circuit clerk in and for the county of Clayton, do hereby certify that the above and foregoing is a true and complete transcript of the records and proceedings in the case of Hecht & Stephens vs. The Cairo and Fulton Railroad Company, as the same appear of record and are on file in my office.

In testimony whereof I have hereunto affixed my hand and official seal, at Corning, this 2d day of October, 1873.

[L. S.] T. L. MARTIN, *Clerk.*

And on said 30th day of September said plaintiffs in error filed their supersedeas bond in our said supreme court, as follows:

Supersedeas bond in S. C.

Whereas the plaintiff, The Cairo & Fulton Railroad Company, has taken a writ of error from the judgment of the Clayton County circuit court, rendered at its September term, 1873, against it in favor of defendants, Hecht & Stephens, for the sum of three hundred and fifty dollars, with costs, and the plaintiff desires to supersede said judgment: Now we, J. W. Weeks and J. L. Hodges, sureties, hereby covenant with the said defendant that the said plaintiff will pay to the defendants all costs

and damages that may be adjudged against the plaintiff, and also
11 that it will satisfy and perform said judgment in case it shall be affirmed, and any judgment or order which the Supreme Court may render, or order to be rendered by the inferior court, not exceeding in amount or value the judgment aforesaid.

Witness our hands this 30th day of September, 1873.

G. W. WEEKS.
J. L. HODGES.

Approved:

N. W. COX.

Filed & approved Sep. 30, 1873.

N. W. COX, *Clk.*

And said plaintiff sued out the following summons:

Summons on writ to sup. c't.

STATE OF ARKANSAS,
In the Supreme Court:

The State of Arkansas to the sheriff of Clayton County, greeting:

You are commanded to summon Samuel Hecht and George W. Stephens to appear in the supreme court of said State on the first day of its next December term and answer an appeal taken by the Cairo & Fulton Railroad Company from a judgment rendered by the circuit court of Clayton County, at its September term, 1873, wherein said Hecht & Stephens were plaintiffs and the Cairo & Fulton Railroad Company was defendant.

Witness my hand and the seal of said court, at Little Rock, this 3d day of October, A. D. 1873.

[L. S.] N. W. COX, *Clerk.*

STATE OF ARKANSAS,
County of :

I have this 4th day of October, A. D. 1873, duly served the within by delivering a copy of the same to the within-named George W. Stephens in person.

W. G. AKERS, *Sheriff.*

12 PRO. IN SUP. C'T.

And afterwards, at the December term, 1873, of our supreme court, were the following proceed's, to wit:

Submission.

Come the parties, by their respective attorneys, and, on motion, this cause is submitted upon briefs, and by the court taken under advisement.

And afterwards, to wit, at the said November term, A. D. 1874, of the supreme court of the State of Arkansas, to which term this cause was continued by operation of law, and on the 12th day of December, a day of said term, were the following proceedings:

Jud't of sup. court set aside Ja'y 14, 1875.

This cause came on to be heard upon the transcript of the record of the circuit court of Clayton County, and was argued by counsel; on consideration whereof, it is the opinion of the court that there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the court that the judgment of said circuit court in this cause rendered be, and the same is hereby, affirmed, with costs.

It is further considered that said appellees recover of said appellant all their costs in this court expended, and have execution thereof.

13 *Opinion of sup. c't.*

And at the same time our said supreme court, by Hon. William M. Harrison, associate justice, delivered the following

OPINION:

This was an action brought in the circuit court of Clayton County by Hecht & Stephens against the Cairo and Fulton Railroad Company to recover damages for injuries done to the plaintiffs' oxen by the locomotive of the defendant through the negligence of its servants and employees.

The summons was served in Clayton County by copy left with the defendant's clerk, there being no chief officer of the company in the county.

The defendant failing to appear and answer, the plaintiffs' damages were assessed by a jury, and judgment taken by default against the defendant for the amount.

The defendant has brought the case here by writ of error, and seeks to reverse the judgment upon the ground that there was no valid service of process.

Section 4515, Gantt's Digest, provides that "where the defendant is a corporation created by the laws of the State, the service of the summons may be upon the president, mayor, chairman of the board of trustees, or other chief officer, or if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent."

14 The plaintiff in error was incorporated by a public act of the general assembly, entitiled "An act to incorporate the Cairo and Fulton Railroad Company," approved 12th January, 1853; and by section 13 thereof all the rights, privileges, immunities, and franchises contained in the charter of the Mississippi Valley Railroad Company, not restrictive or inconsistent with its other provisions, were extended to and conferred upon it.

The Mississippi Valley Railroad Company was incorporated the same session, also by a public act entitled "An act to incorporate the Mississippi Valley Railroad Company," and the 24th section of it is as follows: "Process on said company shall be served on the president, by leaving a copy to his address at the principal office of the corporation, in the hands of any of its officers. The said corporation shall have power to establish a principal office at such place as they may see fit, and the same to change at their pleasure."

The plaintiff in error insists that the foregoing provisions of the char-

ter of the Mississippi Valley Railroad Company were, by the 13th section of its own charter, transferred to and incorporated therein; and contends that section 4515 of Gantt's Digest, which is a provision of
15 the code of practice, and subsequently enacted, in accordance with which the service was made, is within the prohibition of the clause of the Constitution of the United States which declares no State shall pass any law impairing the obligation of contracts.

Admitting that the provisions of the 24th section of the charter of the Mississippi Valley Railroad Company were incorporated into the charter of the plaintiff in error by its 13th section—a question not necessary for us to determine—that in relation to the service of process was not the concession of a right, which as such would be irrevocable by the legislature, nor indeed any concession at all, but a provision for the remedy of wrongs and injuries in cases where the company was a party; and it is now well-established doctrine that the legislature may change the remedy of one of the parties to a contract without in the least impairing its obligation. Newton vs. Tibbatts, 7 Ark., 150; Woodfin vs. Hooper, 4 Humph., 13; Stocking vs. Hunt, 3 Denio, 276; James vs. Stull, 9 Barb., 483; McLaren vs. Pennington, 1 Paige, 107; Howard vs. Kentucky Mutual Insurance Co., 13 B. Monroe, 282; Bank of Columbia vs. Okely, 4 Wheat., 235.

The Supreme Court of the United States, in the case of the Bank of Columbia vs. Okeley, held that the provision in the act by
16 which the bank was incorporated, which gave a summary process for the recovery of notes endorsed to it that were made negotiable at it in their creation, was no part of its corporate franchises, but as the mere remedy and not the right might be repealed or altered as the legislature might will. In their opinion in that case, the court say: "In giving this opinion we attach no importance to the idea of this being a chartered right in the bank. It is the remedy, and not the right; and as such we have no doubt of its being subject to the will of Congress. The forms of administering justice, and the duties and powers of courts as incident to the exercise of a branch of sovereign power, must ever be subject to legislative will, and the power over them is unalienable so as to bind subsequent legislation."

In the case of Howard vs. Kentucky and Louisville Insurance Co., the act creating the corporation required all suits by members of the company against it for losses by fire to be brought in the circuit court of Jefferson County; but the Code of Practice of Kentucky, subsequently enacted, authorized suits against banks and insurance companies to be brought in the county in which there was a branch of the bank or agency of the company, where the same arose out of a transaction of such branch or agency, and the court held that the com-
17 pany did not acquire a right under its charter to be sued alone in the county of Jefferson that could not be divested by subsequent legislation.

There was due service of process, and the judgment must be affirmed

Sug. of am'd't of jud't.

January 11th, A. D. 1875. November term, 1874.

Come said appellants, by their attorney, and suggest an amend
18 ment of the judgment in this cause, and said suggestion is take under advisement.

Am'd't ordered.

November term, 1874.—January 14th, 1875.

The court being sufficiently advised of the motion to amend the judgment in this cause, it is ordered that the judgment entered on the 12th day of December of this term be set aside and a judgment be entered in accordance with the suggestion herein, as follows:

Final jud't of sup. court.

This cause came on to be heard upon the transcript of the record of the circuit court of Clayton County, and was argued by counsel, on consideration whereof it is the opinion of the court that there is no error in the proceedings and judgment of said circuit court in this cause, this court adjudging and holding that the 24th section of the charter of the Mississippi Valley Railroad Company, which is also a part of the charter of the said Cairo and Fulton Railroad Company, providing the manner of the service of process on said company, has been repealed by section 4515 of Gantt's Digest of the Statutes of Arkansas, and that the last-named act is not invalid by reason of impairing the obligation of any contract between the State of Arkansas and said Cairo and Fulton Railroad Company, and so said Cairo and Fulton Railroad
19 Company, the defendants in the court below, were legally served with process, binding them to appear to the action.

It is therefore considered by the court that the judgment of said circuit court in this cause rendered be, and the same is hereby, in all things affirmed with costs; it is further considered that said appellees recover of said appellants all their costs in this court in this cause expended, and have execution thereof.

Writ of error to S. C. U. S. allowed.—Filing copy.—Filing sup. bond.

November term, 1874.—Janua'y 16th, 1875.

Now on this day comes said plaintiff in error, by U. M. Rose and W. H. Winfield, her attorneys, and also come said defendants in error, by Witherspoon & Moore, their attorneys, and the said plaintiff presents here a writ of error to this court from the Supreme Court of the United States, which is duly allowed by the chief justice of this court; and said plaintiff, by leave of the court, files here a copy of said writ of error, and a supersedeas bond, which is approved by the court; which said supersedeas-bond, with the endorsement, is as follows:

Copy of bond.

Know all men by these presents that we, James M. Loughborough and U. M. Rose, are held and firmly bound unto Samuel Hecht
20 and George W. Stephens, partners as Hecht & Stephens, in the sum of seven hundred dollars, conditioned that whereas in a suit lately pending in the supreme court of Arkansas between the Cairo and Fulton Railroad Company and said Hecht & Stephens, judgment was rendered against said railroad company, and the said railroad company having obtained a writ of error, and filed a copy thereof in the clerk's office of said court, to reverse the judgment in said suit, and a citation directed to said Hecht & Stephens, citing and admonishing them to be

and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October next:

Now, if the said railroad company shall prosecute their said writ of error to effect, and answer all damages and costs if she fails to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

JAMES M. LOUGHBOROUGH. [SEAL.]
U. M. ROSE. [SEAL.]

Approved by the court and filed Jan'y 16th, 1875.

L. E. BARBER, *Clk.*

In testimony that the foregoing fifteen pages contain a full, true, and complete transcript of the record of said supreme court in the case stated, except the opinion of the court and briefs of counsel, I, Luke E. Barber, clerk of said supreme court, hereto set my hand and affix the seal of said court, at my office, in the city of Little Rock, the first day of June, A. D. 1875.

[SEAL.] L. E. BARBER, *Clerk.*

(Indorsement on cover:) No. 79. The Cairo and Fulton Railroad Company, plaintiff in error, vs. Samuel Hecht and George H. Stephens. Arkansas sup. c't. Filed 22 June, 1875.

IN THE

SUPREME COURT

OF THE UNITED STATES.

THE CAIRO AND FULTON R. CO., *Plaintiff.* v. SAMUEL HECHT AND GEORGE H. STEPHENS, *Defendants.*	*IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.*

BRIEF FOR PLAINTIFF IN ERROR

BY

U. M. ROSE.

Little Rock:
PRINTED AT THE GAZETTE BOOK AND JOB PRINTING HOUSE.
1877.

IN THE

SUPREME COURT

OF THE UNITED STATES.

THE CAIRO AND FULTON R. CO., *Plaintiff.* v. SAMUEL HECHT AND GEORGE H. STEPHENS, *Defendants.*	*IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.*

BRIEF FOR PLAINTIFF IN ERROR.

Defendants in error sued Plaintiff in error in the Circuit Court of Clay County. Service was had on the 10th day of September, 1873, by leaving a copy of the summons with a clerk of the Railroad Company.

Judgment was rendered by default. A motion was afterwards made to set aside the default because there was neither legal service nor appearance; which motion was overruled. The Railroad Company excepted and appealed to the Supreme Court, where the judgment of the Court below was affirmed. The Railroad Company brought error to this Court.

There is only one question in the case, which may be briefly presented.

The Railroad Company was incorporated by an act entitled, "An Act to incorporate the Cairo and Fulton Railroad Company;" approved January 12, 1853. (See Acts 1852–53, p. 176.)

The 13th Section of the Act contained the following provision:

"This Act shall be deemed a public Act, and shall be favorably construed for all the purposes therein expressed and declared in all Courts and places whatever, and shall be in force from and after its passage; *provided*, that, all the rights, privileges, immunities and franchises contained in the Charter granted at this session of the Legislature of this State to the Mississippi Valley Railroad Company, not restricting or inconsistent with this Act, are hereby extended to and shall form a part of this incorporation as fully as if the same were inserted herein."

The Charter referred to was an act entitled, "An Act to incorporate the Mississippi Valley Railroad Company;" approved January 12, 1853. (Acts 1852–53, p. 184.)

By the 24th Section of the latter Act it was provided, that

"Process on said Company shall be served on the President by leaving a copy to his address, at the Principal Office of the Corporation, in the hands of any of its officers."

Afterwards, by an Act passed in 1868, it was provided, that

"Where the Defendant is a corporation, created by the laws of this State, the service of the summons may be upon the President, Mayor, Chairman of the Board of Trustees or other Chief Officer; or, if its Chief Officer is not found in the County, upon its Cashier, Treasurer, Secretary, Clerk or Managing Agent."

Digest of the Statutes, 1874, Sec. 4,515.

The service was made according to this statute, and not in accordance with the provisions of the Charter.

ASSIGNMENT OF ERRORS.

The Charter constituted a contract between the State and the Railroad Company, and it was error in the Court below to hold that this could afterwards be changed by the Legislature without the consent of the Company, any law of that kind being an infringement of the obligation of the contract, and in violation of Section 10, Article 1, of the Constitution of the United States.

When it is considered that the Charter was enacted to enable the Company to construct a Railway across the entire breadth of the State, it will readily be seen that the provision of the Charter requiring service of process to be made at the Principal Office of the Company, was one of very great importance, preventing the Company from being harrassed by service upon subordinate agents along the entire extent of the line of the road.

The Court below considered that the provision of the Charter in question, being a matter pertaining to the remedy, was wholly within the legislative control.

As this was a valuable concession, it was certainly susceptible of becoming the subject matter of a contract, and if it was in truth the subject matter of a contract, it was within the protection of the clause of the Constitution of the United States above referred to.

It will be observed that the Charter of the Railroad Company contained also an exemption from taxation. Sec. 11. This has been held to be in the nature of a contract, which could not be impaired by any after legislation.

Oliver v. *Memphis R. Co.*, 30 Ark., 129.
St. Louis R. Co., v. *Loftin*, Id., 693.

The latter case relates to the Charter of the plaintiff in error.

On the 12th January, 1853, when these Charters were passed, there was a general statutory provision in force regulating the service of process on corporations, as follows:

"When any such summons shall be issued against any banking company, or other incorporated company, service on the President, or other chief officer, or in his absence, on the Cashier or Chief Clerk, Treasurer or Secretary, or in the absence of these officers, then on any director or manager of such company, such President, or other officer, being, at the time of service, within the County in which he usually resides, or the banking-house or office of such corporation is situate, shall be deemed sufficient service of such summons."

Gould's Dig., 1858, Ch. 39, Sec. 2.

This statute was approved March 23, 1839, and was in force until 1868, when the general statute herein first cited was passed.

Special provision as to the Plaintiff in error was therefore unnecessary. It was only expedient as defining the rights of the Company. The provision made being more favorable than that of the general law, it can only be regarded as a concession. That it was so designed by the Legislature, and was so accepted by the Company, hardly admits of a reasonable doubt. The usual rule that grants by the State are to be strictly construed is reversed in this instance; for the Charter expressly provides that it shall be *favorably* construed.

There was no constitutional or other limitation to prevent the Legislature from agreeing with the Company as to the mode of the service of process on it.

The piont made needs no extended citation of authorities; the rule of the law being well known:

"Whatever belongs merely to the remedy may be altered according to the will of the State, provided the alteration does not impair the obligation of the contract. But if that effect is produced, it is immaterial whether it is done by acting on the remedy or directly on the contract itself. In either case it is prohibited by the Constitution." *Bronson* v. *Kinzie*, 1 How., 316.

See also, *Comm.* v. *U. S. Bank*, 2 Ashm., 349; *Aurora Turnpike Co.* v. *Holthouse*, 7 Ind., 59; *Powell* v. *Sammons*, 31 Ala., N. S., 552.

Since the decision in this case, it has been practically overruled by the Court below in the case of *Cairo & Fulton R. Co.* v. *Turner*, 31 Ark., 494, where it was held that the method of appropriating land by the Company, as provided in the Charter, was within the protection of the Constitution of the United States.

Respectfully,

U. M. ROSE,
For Plaintiff in Error.